Supreme Court, U.S.
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No. 00-1578

IN THE

Supreme Court of the United States

STATE OF TEXAS,

Petitioner,

v.

RAUL REYES,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE EIGHTH JUDICIAL DISTRICT OF TEXAS

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Do the anti-attachment provisions of the Social Security Act, 42 U.S.C. § 407 and the Supremacy Clause of the United States Constitution, U.S. CONST., art. VI, cl. 2 preempt the inclusion or consideration of SSI (Supplemental Security Income) benefits in determining the amount of net resources or income available for payment of child support by a disabled parent under TEX. FAM. CODE § 154.062?

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STATEMENT OF THE CASE

In 1991, the District Court of Reeves County, Texas ordered that Raul Reyes pay $135.00 per month in child support for the minor child Estella Reyes. At the time the order was entered Reyes was working for the local school district as a janitor. This initial child support order was based on Reyes' income derived from his employment with the school district.

In August of 1993, Reyes suffered a debilitating stroke. He had not worked for the school district long enough to be vested in any retirement or disability program offered through the school district. Reyes was no longer able to work as a result of his medical impairments and he applied to the Social Security Administration for disability benefits. Reyes pursued his disability claim for more than two years before the Social Security Administration issued an administrative ruling pursuant to 42 U.S.C. § 1382c(a)(3)(B) that Reyes suffered from physical impairments of such severity that he was unable to do his previous work and that, considering his age, education and work experience he was unable to engage in any other kind of substantial gainful work which existed in the national economy. The Social Security Administration also determined that Reyes was only eligible for Supplemental Security Income benefits under Title XVI of the Social Security Act, 42 U.S.C. §§ 1351-1383 because the school district had opted out of the Social Security system, and did not pay or contribute Social Security taxes on the wages paid to him. He was therefore not insured for disability purposes through Title II of the Social Security Act, 42 U.S.C. §§ 401-432 (OASDI benefits), and not eligible for Social Security Disability Insurance benefits.

In April of 1996, Reyes filed a motion to modify his child support obligation.[1] Reyes presented testimony that he was

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1. There was no challenge at this hearing to Reyes' contention that his circumstances had materially changed since the entry of the previous child support order.

unable to work,[2] and his only income consisted of $470.00 a month in SSI benefits and $131.00 received each month in food stamps. Reyes requested that the court not consider or include his SSI benefits in computing the amount of net resources available for the payment of child support, TEX. FAM. CODE Chapter 154, Subchapter B (Computing Net Resources Available for Child Support) and argued that the anti-attachment provisions in 42 U.S.C. § 407 of the Social Security Act pre-empts a state court from assuming jurisdiction over those benefits. The trial court granted Reyes' motion to modify his child support obligation, but denied his request that his SSI benefits not be considered in calculating his net resources.

The trial court determined that the amount of net resources available to Reyes for the payment of child support was $470.00[3]; and strictly applied the percentages set out in TEX. FAM. CODE § 154.129 to those net resources without consideration of any other circumstances. Based on those findings, the trial court ordered Reyes to pay 17.5% of his net resources or $82.25 a month in child support, **Petitioner's Appendix ("D") 2**.

It is a misstatement of the record to suggest that the trial court considered Reyes' expenditures, or determined the amount available for Reyes' needs in determining the amount of child support to be paid from the income available to Reyes, **Petition at 5**. Instead, support was set strictly as a percentage of the amount determined to be available for the payment of child

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2. Reyes testified at the hearing that he was unable to work as a result of the consequences of his stroke. That testimony was not challenged by any of the other parties to the hearing or contradicted by any of the evidence.

3. There was no claim in the trial court that Reyes had any other income or resources available to him, or that he was intentionally unemployed or underemployed, *see* TEX. FAM. CODE § 154.066 (which would then justify applying the support guidelines to Reyes' earning potential).

support. It is also a misstatement of the record to state that Reyes borrowed money for private school tuition for his second wife's two sons and his biological son. In fact, Reyes testified that he had to borrow money in order to prepare his sons for attendance in a public school, **Petition at 5**. It is misleading and grossly inaccurate to attempt to portray Reyes' current household as anything other than impoverished. Reyes' wife works, even so Reyes still receives an SSI benefit because this family of five remains in poverty. Any increase in Reyes' wife's income will result in a corresponding decrease in the amount of SSI that he is eligible to receive.

Finally, issues relating to the enforcement of the prior child support order were not addressed by the Court of Appeals, and are not part of this case.

REASONS FOR DENYING THE WRIT

I. THIS CASE IS MOOT.

Article III, Section 2 of the Constitution restricts this Court's jurisdiction to actual, ongoing cases and controversies. Jurisdiction over a case may be lost because of the passage of time or the occurrence of events outside the scope of the record which terminate the controversy. As this Court stated in *Powell v. McCormack*, 395 U.S. 486 at 496 (1969), "Simply stated, a case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." In *Local No. 8-6, Oil, Chemical and Atomic Workers International Union v. Missouri*, 361 U.S. 363 (1960) the trial court issued an order enjoining the appellants from continuing a strike. This injunction expired by its own terms some time before the case reached the Supreme Court; nonetheless, the parties sought a determination from the Supreme Court as to the validity of the injunction and the constitutionality of the Missouri statute authorizing the injunction. The Court stated,

> Because that injunction has long since "expired by its own terms," we cannot escape the conclusion that

> there remain for this Court no "actual matters in controversy essential to the decision of the particular case before it." *United States v. Alaska S.S. Co.*, 253 U.S. 113, 116, 40 S.Ct. 448, 449, 64 L.Ed. 808. . . . [T]he duty of this Court "is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." *Mills v. Green*, 159 U.S. 651, 653, 16 S.Ct. 132, 40 L.Ed. 293. See *Amalgamated Ass'n of Street, Electric Railway & Motor Coach Employees, Etc. v. Wisconsin Employment Relations Board*, 340 U.S. 416, 71 S.Ct. 373, 95 L.Ed. 389. To express an opinion upon the merits of the appellants' contentions would be to ignore this basic limitation upon the duty and function of the Court, and to disregard principles of judicial administration long established and followed.

Local No. 8-6, 361 U.S. at 367 and 368. This principle was applied in *Arizonans for Official English v. Arizona*, 520 U.S. 43 (1997), a suit which was originally brought by Maria-Kelly F. Yniguez, an Arizona state employee. In her suit Yniguez alleged that the provisions of Article XXVIII of the Arizona State Constitution, which declared English to be the official language of the state, violated her free speech rights under the First Amendment to the U.S. Constitution. She was fluent in both English and Spanish, and used both languages in her daily interactions with the public as an employee of the state. She contended that the "English only" provisions of Article XXVIII precluded her use of Spanish in the performance of her job. However, by the time the case reached the Supreme Court, Yniguez was no longer a state employee. The Court stated,

> To qualify as a case fit for federal-court adjudication, "an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed." *Preiser v. Newkirk*, 422 U.S. 395, 401, 95 S.Ct. 2330, 2334, 45 L.Ed.2d 272 (1975) (quoting *Steffel v. Thompson*, 415 U.S. 452, 459, n.10, 94 S.Ct. 1209, 1216, n.10, 39 L.Ed.2d 505 (1974)) (internal quotation marks omitted). As a state employee subject to Article XXVIII, Yniguez had a viable claim at the outset of the litigation in 1988 . . . Yniguez left her state job in April 1990 to take up employment in the private sector, where her speech was not governed by Article XXVIII. At that point, it became plain that she lacked a still vital claim for prospective relief.

Arizonans, 520 U.S. at 67.

The trial court's order in this case is dated July 24, 1996. The Court of Appeals for the Eighth District of Texas issued its final opinion on January 13, 2000. The trial court's order reduced Mr. Reyes' child support obligation from $135.00 per month to $82.25 per month. In addition, the trial court found that Reyes was in arrears for past-due support, entered judgment for the arrearage, ordered payment of the arrearage in installments, and ordered payment of costs. However, this Petition is limited in scope to a review of that part of the trial court's order which established Reyes' child support obligation at $82.25 per month. The only question presented is whether the trial court erred in considering Reyes' SSI benefits in the calculation of the child support obligation.

The TEX. FAM. CODE § 154.001 (Vernon 1995) requires the payment of child support by either or both parents until one of the following events occurs:

> (1) until the child is 18 years of age or until graduation from high school, whichever occurs later;
>
> (2) until the child is emancipated through marriage, through removal of the disabilities of minority by court order, or by other operation of law;
>
> (3) until the death of the child; or
>
> (4) if the child is disabled as defined in this chapter, for an indefinite period."

The child for whom support was ordered, Estella Reyes, was 15 years old when the trial court entered its order. Her 18th birthday was on January 29, 1999. She graduated from high school on May 29, 1999. On that date, Reyes' obligation to pay current child support of $82.25 per month ended and this case became moot. Until that date, Reyes had a continuing, viable interest in the method by which his child support obligation was calculated, but he had no such interest afterward. It is important to recall, as Petitioner pointed out, **Petition at 18**, that no specific enforcement mechanism, such as garnishment or withholding, was implemented in this case. If enforcement of this order is sought at some time in the future, then presumably Reyes could defensively urge that his SSI benefits are not available for payment of child support; but that day has not yet arrived. In *this* case Petitioner seeks a ruling from this Court on the validity of a child support order which has expired by operation of the statute (TEX. FAM. CODE § 154.001). In many ways this case can be likened to *Honig v. Doe*, 484 U.S. 305 (1988). That suit was brought by two mentally disabled children alleging that the San Francisco Unified School District violated the Education of the Handicapped Act (20 U.S.C. § 1400 *et seq.*) by expelling them from the public school system for disruptive conduct growing out of their disabilities. The Education of the Handicapped Act applies to disabled children between the ages of 3 and 21 who have not graduated from high school and are entitled to public education. By the time

the case reached this Court, one of the children was 24 years old and the other was 20. The Court stated,

> At the outset, we address the suggestion, raised for the first time during oral argument, that this case is moot. Under Article III of the Constitution this Court may only adjudicate actual, ongoing controversies. *Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 546, 96 S.Ct. 2791, 2796, 49 L.Ed.2d 683 (1976); *Preiser v. Newkirk*, 422 U.S. 395, 401, 95 S.Ct. 2330, 2334, 45 L.Ed.2d 272 (1975). That the dispute between the parties was very much alive when suit was filed, or at the time the Court of Appeals rendered its judgment, cannot substitute for the actual case or controversy that an exercise of this Court's jurisdiction requires.

Honig, 484 U.S. at 317. The Court went on to note,

> Respondent John Doe is now 24 years old and, accordingly, is no longer entitled to the protections and benefits of the EHA, which limits eligibility to disabled children between the ages of 3 and 21. See 20 U.S.C. §1412(2)(B). It is clear, therefore, that whatever rights to state educational services he may yet have as a ward of the State, see Tr. of Oral Arg. 23, 26, the Act would not govern the State's provision of those services, and thus the case is moot as to him.

Honig, 484 U.S. at 318. Similarly, the Petitioner has no justiciable interest in establishing the validity of the child support order for the benefit of Estella Reyes after that order has expired, the child support obligation has terminated, and Estella is no longer entitled to financial support from her parents.

II. THE COURT BELOW PROPERLY APPLIED AND INTERPRETED SUPREMACY CLAUSE JURISPRUDENCE.

The Court of Appeals applied the correct standard of review under the Supremacy Clause as it has been developed by the Court for domestic relations cases, *see Wissner v. Wissner*, 338 U.S. 655 (1950); *Hisquierdo v. Hisquierdo*, 439 U.S. 572 (1979); *McCarty v. McCarty*, 453 U.S. 210 (1981); *Ridgeway v. Ridgeway*, 454 U.S. 46 (1981); and *Rose v. Rose*, 481 U.S. 619 (1987). The Court of Appeals relied on the case of *Tenn. Dep't of Human Servs. ex rel. Young*, 802 S.W.2d 594, 597-99 (Tenn. 1990), and in so doing implicitly found that Congress has "positively required by direct enactment" that state law be "pre-empted", and that the inclusion of SSI benefits in the determination of net monthly resources available for the payment of child support would do "major damage" to "clear and substantial" federal interests, *Id.* at 598 (quoting *Rose*, 481 U.S. at 625 [quoting *Hisquierdo*, 439 U.S. at 581]).

There is indeed a presumption against pre-emption in areas of traditional state regulation such as family law, *Egelhoff v. Egelhoff*, No. 99-1529 (U.S. Mar. 21, 2001). At the same time,

> notwithstanding the limited application of federal law in the field of domestic relations generally, this Court, even in that area, has not hesitated to protect, under the Supremacy Clause, rights and expectancies established by Federal Law against the operation of state law or to prevent the frustration and erosion of the Congressional policy embodied in the federal rights.

Ridgeway, 454 U.S. at 54. Many of the cases which have resulted in pre-emption have involved conflicts between federal and state rules for the allocation or distribution of a federal entitlement or benefit, *Hisquierdo*, 439 U.S. at 582. In the cases finding that pre-emption is required, certain salient or critical characteristics of the federal benefit or entitlement can be

discerned. Those common characteristics are: (1) a specified exclusive beneficiary; or (2) a designated beneficiary together with clear, forceful language indicating that the benefits belong to that beneficiary and no others; and (3) broad anti-attachment provisions that insure the benefits actually reach the beneficiary, *Wissner*, 338 U.S. at 658; *McCarty*, 453 U.S. at 225; *Ridgeway*, 454 U.S. at 61; *Hisquierdo*, 439 U.S. at 584. When these factors exist the Court has pre-empted all state law that stands in the way, or that alters Congress' decision as to how the finite funds are to be allocated. As stated by this Court, "The pertinent questions are whether the right as asserted conflicts with the express terms of federal law and whether its consequences sufficiently interfere with the objectives of the program to require non-recognition," *McCarty*, 453 U.S. at 221 (quoting *Hisquierdo*, 439 U.S. at 583).

By way of contrast, in the case of *Rose v. Rose*, 481 U.S. 619 (1987) the Court concluded that exercise of the state court's jurisdiction over the federal benefit in question did not interfere with the objectives of the program and did not require pre-emption. In that case, the veteran's disability benefits in question were not provided to support the beneficiary alone, but were intended to provide reasonable and adequate compensation for both the designated beneficiary and his family, *Id.* at 630. The veteran in the *Rose* case received $1,211.00 in veteran's disability benefits; $1,806.00 in veteran's aid and attendance benefits; $90.00 in veteran's dependent's benefits; and $281.00 in Social Security disability benefits. His children received an additional $94.00 a month in Social Security children's insurance benefits. The veteran was ordered by the state family law court to pay $800.00 a month in child support. He initially paid $704.00, contending that the remaining $94.00 was satisfied by the Social Security children's insurance benefits. Subsequently, the veteran paid only the $90.00 in dependent benefits that he had received from the Veterans' Administration. The family law court, after hearing, found the veteran in willful contempt for failing to pay child support. This

Court concluded that, based on the apportionment provisions of the United States Code governing veteran's benefits, "Congress clearly intended Veterans' Disability Benefits to be used, in part, for the support of the veteran's dependents." *Id.* at 631. On that basis, the Court distinguished decisions which concluded that state domestic relations laws were pre-empted by similar anti-attachment provisions. *See Wissner*, 338 U.S. at 659; *Hisquierdo*, 439 U.S. at 576; and *Ridgeway*, 454 U.S. at 52-53.

The Court of Appeals in this case, the Supreme Court of Arkansas in the case of *Davis v. The Office of Child Support Enforcement*, 20 S.W.3d 273 (Ark. 2000), and the Supreme Court of Tennessee in *Young*, 802 S.W.2d at 597-99, were correct in holding that the SSI benefits in question in each of these cases possess the requisite characteristics to require pre-emption. The courts also properly concluded that (unlike the Veteran's Disability benefits in question in *Rose*) SSI benefits are provided only for the beneficiary, and as acknowledged by the Petitioner, **Petition at 7**, are intended by Congress to guarantee a minimum income level for those who cannot work because of age, blindness or disability. S. Rep. No. 92-1230, at 4-12 (1972) *reprinted in* 1972 U.S.C.C.A.N. 4989; 20 C.F.R. § 416.110 (1992). Given that framework, the Court of Appeals was correct in finding that any state law that changed or altered the allocation or distribution of SSI benefits must be pre-empted.

It is also reasonable to impose traditional conflict pre-emption analysis in this case, rather than any special standard reserved for domestic relations cases. This would be a logical consequence of the increased involvement of the federal government in child support issues,[4] *see Boggs v Boggs*,

4. The traditional lines between state domestic relations law and federal law have increasingly become blurred as Congress becomes more actively involved in child support issues. Much of current state (Cont'd)

520 U.S. 833 (1997) (holding that conventional conflict pre-emption principles required pre-emption of state law which would have improperly changed ERISA's structure and balance and thereby stood as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress). The federal regulatory scheme governing SSI benefits is just as intricate and comprehensive in providing a minimum subsistence welfare benefit to the aged and disabled as is ERISA in governing employee benefit plans. Indeed, part of Petitioner's argument in support of his petition is that federal regulations and federal policy, as articulated by the Federal Office of Child Support Enforcement, require that the states consider SSI benefits in determining the amount of income available to pay child support.[5]

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law involving the establishment and enforcement of child support is driven and mandated by federal law, *see Social Services Amendments of 1974*, Pub. L. No. 93-647, 88 Stat. 2337 (1975), codified in part as 42 U.S.C. §§ 651-659 (1983); *Child Support Enforcement Amendments of 1984*, Pub. L. No. 98-378, 99 Stat. 1305 (1984); *Family Support Act of 1988*, Pub. L. No. 100-485, 1988 U.S.C.C.A.N. (102 Stat. 2343); and *Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, Pub. L. No. 104-193, 110 Stat. 2105 (1996). Since 1988 federal law has required each state to promulgate a guideline from which a decision maker could calculate a presumptive child support award. Most states have adopted either income shares model or one based on a percentage of obligor income, *see* J. Thomas Oldham, *Introduction to the 1999 Child Support Symposium* and Jane C. Venohr & Robert G. Williams, *The Implementation and Periodic Review of State Child Support Guidelines*, 33 Fam. L.Q. 7 (1999).

5. That claim is easily resolved. As noted in *Whaley v Schweiker*, 663 F.2d 871, 873 (CA9 1991), deference is not due to an interpretive policy not subject to the procedural protections inherent in the drafting of a regulation. Nor is the interpretation of a federal statute or federal regulations by one federal agency of a different federal agency entitled to any deference. Here the issue is the scope and breadth of the federal statute and regulations governing SSI benefits. The Office of Federal Child Support Enforcement is no more in a position to interpret the (Cont'd)

III. THE DIFFERENCE BETWEEN SSI AND DISABILITY INSURANCE BENEFITS.

Much of Petitioner's argument ignores, or demonstrates a profound lack of understanding of the very real differences between the Old-Age, Survivors and Disability Insurance programs set out in Title II of the Social Security Act, 42 U.S.C. §§ 401-432 (OASDI) and the provisions for public assistance to the aged and disabled set out in Title XVI of the Social Security Act, 42 U.S.C. §§ 1381-1383f (SSI). The OASDI benefit programs included in Title II are at least partially based on contributions paid by the worker, and the benefits are payable without regard to the need of the recipient. These benefits are paid out of the Social Security trust funds, 42 U.S.C. § 401. The primary objective of the OASDI benefit programs of the Social Security Act is to replace earnings lost by workers and their families due to illness or old age, *Matthews v. de Castro*, 429 U.S. 181 (1976). A significant aspect of that statutory scheme is that benefits are payable not only to the worker who has contributed into the Social Security trust fund, but also to those members of the worker's family who are still dependent on the worker, 42 U.S.C. § 402(b)-(f). The Commissioner of the Social Security Administration has promulgated regulations not only defining the dependency requirements for family members (20 C.F.R. §§ 404.330-404.374), but also setting out the amounts payable to a worker based on past contributions into the trust fund (20 C.F.R. §§ 404.312 and 404.317), and the amounts payable to dependent family members (20 C.F.R. §§ 404.333 and 404.353).[6] Another key feature of these benefits

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statutes and regulations governing SSI benefits than is the Commissioner of the Social Security Administration entitled to interpret statutes and regulations governing the interests and obligations of a veteran's pension recipient, *Id.* at 873.

6. In the last several years there has been a judicial and legislative recognition that a parent was entitled to a credit against a child support
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is that they are payable without regard to other income or resources of the recipient (compare 42 U.S.C. § 402 and 20 C.F.R. Part 404 with 42 U.S.C. §§ 1381a, 1382 and 20 C.F.R. Part 416, Subparts K and L). Thus, the veteran in *Rose* did not have his social security disability benefits reduced even though he was also entitled to a wide range of veteran's benefits. There is no dispute that OASDI benefits are exactly like veteran's benefits, and can be considered as income available for child support as authorized by the waiver of sovereign immunity in § 659.

In contrast, Supplemental Security Income (SSI) under 42 U.S.C.A. §§ 1381-1383(f) is a means-tested welfare program designed to provide a subsistence allowance, under federal

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obligation where Social Security payments are made to the child on that parent's earnings record, (in Texas *see In the Interest of Allsup*, 926 S.W.2d 323 (Tex. App. – Texarkana 1996); *In the Interest of Rich*, 993 S.W.2d 272 (Tex. App. – San Antonio 1999); and TEX. FAM. CODE § 154.132) (*see generally Farley v. Farley*, 412 S.E.2d 261 (W. Va. 1991); *Newman v. Newman*, 451 N.W.2d 843 (Iowa 1990); *Childerson v. Hess*, 555 N.E.2d 1070 (Ill. App. 1990); *Poynter v. Poynter*, 590 N.E.2d 150 (Ind. App. 1992); *McCloud v. McCloud*, 544 So. 2d 764 (La. App. 1989); *Frens v. Frens*, 478 N.W.2d 750 (Mich. App. 1991); *Romero v. Romero*, 682 P.2d 201 (N.M. App. 1984); *Board v. Board*, 690 S.W.2d 380 (Ky. 1985); *Cohen v. Murphy*, 330 N.E.2d 473 (Mass. 1975); and CAL. CIV. CODE § 4705 (West 1991) (Social Security benefits shall be a credit to the payer unless the benefits were considered in the initial child-support order); *see also* 34 A.L.R.5th 447. In some cases this will mean that the disabled worker receiving Title II OASDI benefits would pay very little if anything, out of the monies paid directly to him, as the child support obligation will be largely satisfied by the dependent benefits received by the child. Thus, a child support order assessed against a Title II OASDI recipient will have far less impact than a child support order assessed against a Title XVI SSI recipient since there are no dependent benefits to offset. The initial position of the veteran in *Rose* seeking a credit for the child insurance benefits is now supported by Tennessee law, *Orr v. Orr*, 871 S.W.2d 695 (Tenn. App. 1993).

standards, to the nation's needy aged, blind, and disabled, *Schweiker v. Wilson*, 450 U.S. 224 (1981). The Senate report on the Social Security Amendments of 1972 describes the SSI program as a plan "designed to provide a positive assurance that the Nation's aged, blind, and disabled people would no longer have to subsist on below poverty-level incomes." S. Rep. No. 92-1230, p. 384 (1972). In other words, the SSI program is a public assistance benefit program similar to Aid to Families with Dependent Children, *In re Marriage of Benson*, 495 N.W.2d 777 (Iowa Ct. App. 1992). The primary purpose of SSI is to assure the recipient's income is maintained at a level viewed by Congress as the minimum necessary for the subsistence of a specific beneficiary, *Whaley v. Schweiker*, 663 F.2d 871 (CA9 1981). In comparison to OASDI Benefits there is no insured status requirement and no requirement that the recipient have contributed to the Social Security Administration in the past, *Kozaczka v. Schwieker*, 520 F. Supp. 1189, 1193 (W.D.N.Y. 1981). On the other hand, only individuals who have income and resources that fall below certain statutory maximum amounts are eligible, *Lapin v. Mathews*, 422 F. Supp. 1089, 1090 (D.C. 1976) and *Termini v. Califano*, 611 F.2d 367, 368 (CA2 1979). In order to meet these objectives a comprehensive regulatory scheme has been established (20 C.F.R. Part 416). This scheme not only provides a mechanism for determining eligibility for SSI benefits, it also creates a carefully calibrated system determining the amount of those benefits by taking into account whether a recipient's essential needs are being satisfied by other means, *Antonioli v. Harris*, 624 F.2d 78, 80 (CA9 1980) (20 C.F.R. Part 416, Subparts D, K and L). Under this system, SSI benefits will be reduced by virtue of the receipt of other income or in kind support, whether received by the actual SSI beneficiary, or by a person in the same household as the beneficiary, 20 C.F.R. Part 416, Subparts D, K and L. These provisions ensure not only that the recipient's income is maintained at the minimum necessary for the beneficiary's subsistence, but also that the government does not expend any

more funds than are necessary to maintain that minimum subsistence level.[7] Finally, SSI Benefits are only paid to the eligible recipient[8] and there is no provision in the Social Security Act or Social Security Regulations for the payment of dependent benefits to members of a beneficiary's family, even if those family members are otherwise dependent on the recipient, 42 U.S.C.A. §§ 1381-1383(f), 20 C.F.R. Part 416.

In addition to the differences between the two programs discussed above, these programs have different sources of funding. OASDI benefits are funded by Social Security payroll withholdings from the wages of those currently employed. The SSI program is funded by the general revenues of the United States Treasury, 42 U.S.C. § 1381.[9] In other words, Reyes, like other SSI recipients, is being supported by taxpayer dollars so that he will receive a minimum level of subsistence that he is unable to provide for himself.

It was this comprehensive and intricate scheme that persuaded the Tennessee Supreme Court in *Young*, 802 S.W.2d at 597-99, that "SSI payments" are for the benefit of the individual recipient, rather than for the benefit of the recipient

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7. For Reyes, this means that his financial eligibility for SSI is evaluated each month. Any increase in other income attributable to his household decreases the amount of SSI he is eligible to receive in a given month. In other words, he is not guaranteed to receive $470.00 each month.

8. The current maximum Federal Rate for SSI benefits is $530.00 for an eligible individual and $796.00 for an eligible couple (an eligible couple means both husband and wife live in the same household, are both disabled and eligible for disability benefits) 20 C.F.R. §§ 416.405-416.412. Any other income available to the eligible person or eligible couple reduces that Federal Rate. The states are free to supplement the Federal Rate. The State of Texas has chosen not to.

9. As noted in *Ridgeway*, 454 U.S. at 57, the federal interest is especially strong when the monies or benefits involved are attributable to general tax revenues.

and the recipient's dependents.[10] In opposition to this position, the only legal authority cited by Petitioner is the case of *Peura by and through his guardian, Bill Herman v. Mala*, 977 F.2d 488, 490 (CA9 1990), which does not support the proposition that SSI benefits are intended to assist "families". Most conspicuously, *Peura* is not an SSI case, but instead is a Medicaid eligibility case. In that case Mr. Peura received $1,100.00 per month from a federal disability pension. From that pension benefit he paid child support. If the amount paid as child support was considered to be "available" to Mr. Peura, then the amount paid by Medicaid to the nursing home providing his care would be reduced. The Ninth Circuit ultimately held that the state of Alaska was authorized under the Medicaid regulations to consider the child support payments out of the *Peura's* federal disability pension. This conclusion appears to conflict with the earlier Ninth Circuit decision in *Whaley v. Schweiker*, 663 F.2d 871 (CA9 1991). The issue in *Whaley* was whether, in determining a recipient's eligibility for ongoing SSI benefits, the inclusion of veteran's benefits paid for the benefit of the recipient's minor children (who lived in the recipient's household) was proper. The Ninth Circuit rejected the position taken by the Secretary of the Social Security Administration stating that the inclusion of the children's benefits was, ". . . made without statutory support. We must reject it as a complete vitiation of the purpose supporting both of these statutes — the intent to help families like Whaley's to maintain minimally adequate income levels," *Id.* at 874. The *Peura* court distinguished *Whaley* on the facts, concluding that *Whaley* was not controlling under the facts presented. *Puera*, 977 F.2d at 490. Neither of these cases address the anti-attachment

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10. The Tennessee Supreme Court also noted that Aid to Families with Dependent Children offers public assistance benefits to families where the father is dead, absent or *disabled*, and that this public assistance program establishes payments to the children of disabled fathers separate from the payments to disabled fathers themselves, *Young*, 802 S.W.2d at 597-99.

provisions of § 407, nor do they speak to the issues presented in this case. Neither of these cases will support the Petitioner's conclusion that a state court can alter or upset the allocation of SSI benefits mandated by Congress.

IV. THE MEANING OF "OTHER LEGAL PROCESS" IN § 407.

Petitioner contends that courts of various jurisdiction disagree on the meaning of "other legal process" in § 407, and that certain generic rules of statutory construction inescapably lead to the conclusion that the term "other legal process" in § 407 is limited to a proceeding in the nature of a garnishment, **Petition at 9-10**. Neither contention has any merit. Section 407 provides a broad shield designed to protect benefits paid either to an OASDI recipient or an SSI recipient, through 42 U.S.C. § 1381(d)(1).

A. Case Law

Petitioner concedes that there is extensive and persuasive legal authority that § 407 must be interpreted broadly, and would encompass a prohibition against consideration of federal welfare benefits when determining money available for child support, **Petition at 16**. Petitioner cites a number of cases supporting this proposition. Those citations will not be repeated here, but are adopted by reference. A fair reading of these cases clearly shows that Petitioner has fundamentally misconstrued the meaning of the phrase "other legal process." Petitioner urges that "other legal process" refers only to a writ, order, summons or process in the nature of garnishment, directed to the governmental entity. However, the authority cited does not support such a restricted view. Rather, the cases cited follow the Supreme Court in a broad construction of that phrase as it is used in various federal statutes. *See Wissner v. Wissner*, 338 U.S. 655 (1950) (application of community property law to proceeds of a veteran's life insurance policy pre-empted by federal statutes requiring payment to designated beneficiary);

Hisquierdo v. Hisquierdo, 439 U.S. 572 (1979) (community property law pre-empted by federal statutes relating to railroad retirement benefits); *Ridgeway v. Ridgeway*, 454 U.S. 46 (1981) (provisions of divorce decree ordering that the proceeds of a veteran's life insurance policy be paid to his children pre-empted by federal statute requiring payment to designated beneficiary); and *McCarty v. McCarty*, 453 U.S. 210 (1981) (community property law pre-empted by federal anti-attachment statutes relating to military retirement benefits) In none of these cases was there a "garnishment order".

Petitioner has submitted a scattering of different cases which he suggests support a more restricted interpretation of § 407, but his reliance on those cases is misplaced. The first such case is *Norman v. St. Clair*, 610 F.2d 1228 (CA5 1980), which he claims stands for the proposition that § 407, "clearly contemplates a formal proceeding"— by implication something in the nature of a garnishment — to obtain a protected benefit. **Petition at 13.** That assertion is not accurate. *Norman* is, much like the *Puera* case, a Medicaid deeming case, *Id.* at 1243. The issue was whether the State of Mississippi could "deem" or consider the income of one spouse as available to meet the needs of the other spouse residing in a nursing home. The specific argument in *Norman* was that the "deeming" of OASDI payments made to one spouse as available to the other spouse was a garnishment prohibited by 42 U.S.C. § 407. There was no claim that the "deeming" constituted "other legal process" under § 407. The Fifth Circuit concluded in response to that specific argument that the "deeming" of income in that case was not a garnishment but *did not* hold that "other legal process" is limited to a garnishment, *Id.* at 1243.

Nor is *Phipps v. Phipps*, 864 P.2d 613, 614, 617 (Idaho 1993),[11] reliable authority. The *Phipps* case expressly conflicts

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11. Petitioner focuses on the lack of specification of the source of payments to the ex-wife, while ignoring the more important distinction (Cont'd)

with this Court's holdings in *Hisquierdo*, 439 U.S. at 588-89 (holding that anti-attachment provisions prohibit anticipation of future receipt of protected benefits in division of marital estate in divorce) and *Ridgeway*, 454 U.S. at 61 (holding that claims based on property settlement agreements are not exempt from the strong language of the anti-assignment provisions). It is also far outweighed by contrary authority, *see Olson v. Olson*, 445 N.W.2d 1 (N.D. 1989); *Luna v. Luna*, 608 P.2d 57 (Ariz. App. 1980); *Larango v. Larango*, 610 P.2d 907 (Wash. 1980); and *In re Swan*, 720 P.2d 747 (Or. 1986).

The other cases cited by Petitioner also fail to provide persuasive authority in support of Petitioner's arguments, *e.g.*, *Tunnicliff v. Common Wealth Dep't of Pub. Welfare*, 396 A.2d 1168 (Pa. 1978) (no right to recoupment of payment voluntarily made from SSI benefits); *Dionne v. Bouley*, 757 F.2d 1344, 1355 (CA1 1985) (§ 407 protects both OASDI benefits paid to the worker and dependent benefits — no suggestion that the protection is limited only to creditors); *Dep't of Health & Rehabilitation Servs. v. Davis*, 616 F.2d 828, 831 (CA5 1980) (expressly overruled by *Bennett v. Arkansas*, 485 U.S. 395, 398 (1988)); *Steiner v. Steiner*, No. 1999-CA-01220-SCt, 2001 WL 83936 (Miss. Feb. 1, 2001) (veteran's disability benefits may be considered for child support and alimony in a manner consistent with the exception to anti-attachment set out in 42 U.S.C. § 659); *LaFarr v. LaFarr*, 315 A.2d 235, 236-37 (Vt. 1974) (this case presents the *Rose* fact situation prior to the court's ruling in *Rose*).

B. The Rules of Statutory Construction

Petitioner asserts that "Applying the *Ejusdem Generis* rule requires that the meaning of 'other legal process' be confined

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found by the court that there were other non-federal benefits not protected by the anti-assignment provisions of § 407 that could be attached to enforce the property settlement agreement. That is not at all the issue presented here.

to the class of word proceeding it — execution, levy, attachment and garnishment.", **Petition at 8**. No authority is submitted for that proposition. By way of contrast, this Court has stated in *Hisquierdo*, 439 U.S. at 586,

> We, however, cannot so lightly discard the settled view that anti-assignment statutes have substantive meaning. Section 231m [the anti-assignment provision in question in that case] goes far beyond garnishment. It states that the annuity shall not be subject to "legal process under any circumstances whatsoever, nor shall the payment thereof be anticipated."

Rules of statutory construction are simply practical guidelines designed to determine the intent of the Legislature. As such, "every technical rule as to the construction or force of particular terms, must yield to the clear expression of the paramount will of the Legislature," *see United States v. Freeman*, 44 U.S. (3 How.) 556, 564, 11 L. Ed. 724, 727 (1845). Furthermore, application of the Rule of *in pari materia* makes most sense when statutes are enacted by the same legislative body at the same time, *Erlenbaugh v. United States*, 409 U.S. 239, 243, 93 S. Ct. 477, 480 (1972). Different legislation relating to the same subject matter does not compel *in pari materia* construction if the two sections in question were intended to serve significantly different purposes, *United States v. Freeman*, 44 U.S. at 564.

In this case, §§ 407 and 659 have very different purposes. Section 659 is a consent by the United States to income withholding, garnishment and similar proceedings for enforcement of child support and alimony obligations. Congress adopted § 659 as part of the Child Support Enforcement Act of 1975, 42 U.S.C. §§ 651-662 (1983), which included in its provisions a directive to the states to develop programs for wage withholding for child support. That directive, found at 42 U.S.C. § 654(19)(B)(ii), requires each state to create a plan which

provides a mechanism for enforcement of a child support obligation by bringing legal process (as defined in § 659(i)(5)) to require an employer to withhold these amounts from wages or other compensation. Viewed in that context, "§659 does not refer to *any* legal process. The provision was intended to create a limited waiver of sovereign immunity so that state courts could issue valid [wage withholding/garnishment] orders directed against agencies of the United States Government attaching certain funds in the possession of those agencies,"[12] *Rose*, 481 U.S. at 635. As a waiver of sovereign immunity it must be strictly construed, *Id.* On the other hand, § 407 is a "broad bar against the use of any legal process to reach all Social Security benefits," *Philpott v. Essex County Welfare Board*, 409 U.S. 413, 417 (1973). There is nothing in the purpose of § 659 to indicate that Congress designed or intended § 659 to limit the scope or breadth of the protection afforded by § 407 except as set out by its express terms.

V. THERE IS NOT A SIGNIFICANT SPLIT IN LEGAL AUTHORITY ON WHETHER SSI BENEFITS MAY BE CONSIDERED TO DETERMINE THE AMOUNT OF A CHILD SUPPORT OBLIGATION.

Petitioner contends to this Court that "Numerous State and Federal Courts are divided on whether SSI Benefits may be considered to determine a child support obligation," **Petition at 10**. That claim is not accurate. An analysis of the child support guidelines of the various states reveals that 32 states expressly

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12. Petitioner now concedes that the limited waiver of sovereign immunity contained in § 659 does not apply to SSI benefits, *see* **Petition at 9-10 n.3 and Petition at 12 n.6,** *see also Young*, 802 S.W.2d at 597-99; *Davis*, 20 S.W.3d 273; and *Becker County Human Servs. v. Peppel*, 493 N.W.2d 573 (Minn. Ct. App. 1992). On the other hand, he has provided no explanation for his contention that Congress intended that SSI benefits be considered available for purposes of child support, but failed to extend the waiver of sovereign immunity to these benefits.

exclude SSI from the definition of gross income.[13] Another nine states exclude from the definition of gross income means-tested public assistance benefits,[14] **Supplemental Appendix ("SA")**. Of the remaining nine states, Arkansas,[15] Florida, Illinois, Massachusetts, Mississippi, and Texas, as well as the District

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13. Petitioner argues that even in those states that specifically exclude these benefits from the income available for child support, a court may, by the subterfuge of deviation from the child support guidelines, still consider SSI or public assistance benefits. This argument reflects a lack of understanding of the child support guidelines. By way of example, the State of Texas excludes from consideration of gross income benefits paid in accordance with Aid for Families with Dependent Children (public assistance benefits) TEX. FAM. CODE § 154.063(c)(3). The Texas Family Code also prohibits the addition of any portion of the income of a new spouse in order to calculate the amount of child support to be ordered in a modification of support order, TEX. FAM. CODE § 156.404(a). Petitioner has not submitted any statutory or case authority that indicates that a trial court has the discretion to ignore these exclusions and prohibitions. The discretion or authority to deviate from the guidelines simply permits a trial court to make either an upward or downward adjustment to guideline support, but only to the degree that income is available for payment of child support. It does not authorize a court to ignore basic definitions of what can be considered as income available in determining the amount of money to be paid in child support. The case of *Landis v. Landis*, 691 A.2d 939, 941-42 (Pa. Super. Ct. 1997) does not support Petitioner's argument. In that case, the court acknowledged that SSI could not be used to set the amount of an obligor's child support obligation. On the other hand, the court did find that SSI benefits received by a disabled child could be considered as other income in the household of the custodial parent so as to reduce the amount of child support paid. The Pennsylvania child support guidelines do not prohibit that discretionary practice.

14. Nevada limits its definition of gross income to wages or self employment, *see* **SA**; *In re Marriage of Benson*, 495 N.W.2d 777 (Iowa Ct. App. 1992) holds that SSI are means-tested welfare benefits.

15. The Supreme Court of Arkansas in *Davis v. Child Support Enforcement*, 20 S.W.3d 273 (Ark. 2000) held that SSI is not subject to state court jurisdiction.

of Columbia, neither list or exclude SSI benefits in their definition of income for purposes of setting child support (although the States of Texas and Florida expressly excludes benefits paid in accordance with aid for families with dependent children, TEX. FAM. CODE § 124.062(c)(3) and FLA. STAT. ANN. § 61.30(14)(c) (West Supp. 2001)). Oregon creates a rebuttable presumption that an SSI or general assistance recipient is unable to pay child support, OR. REV. STAT. § 25.245 (1999). Only the child support guidelines of two states, Idaho[16] and Kentucky[17], include SSI in their definition of income.

Secondly, the cases of *Ex Parte Griggs*, 435 So. 2d at 103 (Ala. Civ. App. 1983); *Whitmore v. Kenney*, 626 A.2d 1180, 1180-85 (Pa. Super. Ct. 1993), *appeal denied*, 641 A.2d 587 (Pa. Mar. 18, 1994); and *Sharlot v. Sharlot*, 110 A.D.2d 299, 300-01 (N.Y. App. Div. 1985) no longer represent the jurisprudence of Alabama, Pennsylvania or New York. Each of those states have amended their child support guidelines to expressly exclude SSI from the definition of income (*see* PA. R. CIV. P. 1910. 16-2(b); ALA. R. JUD. ADMIN. 32(B)(2)(b); and N.Y. DOM. REL. LAW § 240, 1-b(b)(5)(vii)(F) (McKinney 1999)).

The other cases cited by Petitioner are actually either OASDI or veteran benefit cases, *e.g.*, *Kirk v. Kirk*, 577 A 2d 976 (R.I. 1990) (OASDI benefits can be used for child support, pursuant to 42 U.S.C. § 659); *Cohen v. Murphy*, 330 N.E.2d

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16. Idaho's child support guidelines state that benefits from public assistance are included in gross income except in cases of extreme hardship, and that the paying parent should not be denied the means for self-support at a minimum subsistence level, IDAHO R. CIV. P. 6(c)(6), Child Support Guidelines (1999).

17. In an unresolved conflict the State of Kentucky excludes from the definition of gross income benefits received from means-tested public assistance programs, including but not limited to public assistance as defined under Title IV-A of the Federal Social Security Act, and food stamps, while at the same time expressly including Supplemental Security Income (SSI) as income, KY. STAT. ANN. § 403.212(2)(b).

473 (Mass. 1975) (a parent is entitled to a credit or offset on a child support obligation for veteran's and Social Security dependent benefits — the Court declined to rule on the pre-emption issue); and *In re Marriage of Anderson*, 522 N.W.2d 99, 99-102 (Iowa Ct. App. 1994). The *Anderson* case points out the continued confusion over the difference between OASDI benefits and SSI benefits. The husband in *Anderson* received veteran's disability pay in the amount of $1,548.00 and $429.00 per month in what the Court described as SSI. The receipt of $1,548.00 in veterans benefits would financially disqualify Anderson from receiving federal SSI benefits, 20 C.F.R. §§ 416.1100 and 416.1121(a). The actual holding in *Anderson* was that veterans benefits were available for the payment of alimony, following this Court's ruling in *Rose*, *Id.* at 101-02. Both Rhode Island and Iowa expressly exclude SSI from gross income under their child support guidelines, **SA**.

Only the case of *Commonwealth of Kentucky ex rel. Morris v. Morris*, 984 S.W.2d 840 (Ky. 1999) represents the active jurisprudence of any state that SSI benefits can be considered as income for the purposes of setting child support. Over a strong dissent, *Id.* at 842, the Kentucky Supreme Court applied the principle of *in pari materi* and found that the definition of "legal process" in 42 U.S.C. § 659 supports the conclusion that, " '[T]he legal process' referred to in §407 is in the nature of a garnishment order directed towards a governmental entity." *Id.* at 841, **Petition at 11**. Given the very different purposes of §§ 407 and 659, and this Court's prior jurisprudence, *Morris* is not reliable legal authority, and does not create an intractable split among the states on this issue. The overwhelming majority of courts have held that § 407 pre-empts state action involving SSI in the area of child support, *see, e.g.*, *Davis v. The Office of Child Support Enforcement*, 20 S.W.3d 273 (Ark. 2000); *Tenn. Dep't of Human Servs. ex rel. Young*, 802 S.W.2d 594, 597-99 (Tenn. 1990); *Esteb v. Esteb ex rel. Indiana*, 563 N.E.2d 139, 141-42 (Ind. Ct. App. 1990); *Becker County Human Servs. v. Peppel*, 493 N.W.2d 573, 575-76 (Minn. Ct. App. 1992); *Moore*

v. Sharp, 532 N.Y.S.2d 811, 812 (N.Y. App. Div. 1988); and *Langlois v. Langlois*, 441 N.W.2d 286, 288 (Wis. Ct. App. 1989).

VI. PETITIONER'S REQUEST THAT THIS COURT INVOKE AN IMPLIED EXCEPTION TO SECTION 407.

Petitioner requests that this Court find that there is an implicit exception to § 407 when "The reaching of Social Security benefits is not going to impair the ability of the recipient to satisfy his or her basic needs," **Petition at 12**, citing *Citronelle-Mobile Gathering, Inc. v. Watkins*, 934 F.2d 1180 (CA11 1991) in support of that request. The argument is problematic for two reasons. First, this court has consistently declined to approve such an exception, *Philpott*, 409 U.S. at 416-17; *Bennett v. Arkansas*, 485 U.S. 395 (1988) (expressly overruling *Dep't of Health and Rehabilitative Servs. v. Davis*, 616 F.2d 828, 830 (CA5 1980) — and stating that "the 'implied exception' argument is not supported by our decision in *Rose v. Rose*, 481 U.S. 619 (1987) . . . benefits in question in *Rose* were designed by Congress to support not only the recipient of the benefits, but also his dependents," *Bennett*, 485 U.S. at 398); and *Ridgeway*, 454 U.S. at 60-61. These same cases have also rejected the notion that the scope of § 407 is limited to the claims of creditors, which belies Petitioner's argument and statements made by the Kentucky court in *Morris*, 984 S.W.2d at 841.

Secondly, given the circumstances in *Citronelle* (judgment debtor had sole control over corporate assets of over ten million dollars and managed to flee to Switzerland — to protect Social Security payments of $2,826.00 which had been deposited into an account with tens of thousands dollars would make a mockery of the purpose of the Social Security payments in general as well as protections of them provided by § 407), it would seem to have little value as precedent, and its validity is probably limited to its unusual facts. Certainly, *Citronelle*, which does not involve SSI benefits, has no application to this case.

Indeed, the Petitioner's mistaken claim that the trial court in this case evaluated Reyes' need for funds, **Petition at 11 n.4**, speaks to the problems inherent in such an approach. To the contrary child support was automatically set as a percentage of the only income Reyes had — his SSI benefits. The Social Security Administration, through its carefully crafted and calibrated administrative system, has determined the amount necessary for an SSI recipient's minimal subsistence, taking into account other income or resources to meet those needs. Congress has chosen to meet the minimal subsistence requirements of these poor and disabled adults through the SSI program. The State of Texas is not at liberty to affect this congressional choice by intrusion into the mechanics of the program. "Congress has made a choice . . . it is for Congress to decide how these finite funds are to be allocated. The statutory balance is delicate . . . any automatic diminution of that amount frustrates the congressional objective." *Hisquierdo*, 439 U.S. at 585. Petitioner would cause just such a frustration of the objectives of this program by forcing the use of these funds for child support. The State of Texas has made a legislative choice that AFDC benefits are not income for the purposes of establishing child support by expressly excluding those benefits from the definition of income, TEX. FAM. CODE § 154.063(c)(3). This policy was designed to ensure that AFDC benefits reach their designated beneficiaries. Similarly, Congress enacted the anti-attachment provision contained in § 407 to insure that SSI benefits reach the designated beneficiary. The State of Texas should look to Congress, not to this Court, for any change in the policy embodied in § 407.

Petitioner believes that SSI recipients are "dodging child support obligations, even though they can afford to pay them. As a consequence, thousands of children may not be receiving the support to which they are entitled," **Petition at 18-19**. Petitioner also concedes that SSI benefits provide a guaranteed minimum level of subsistence, **Petition at 7**. Petitioner creates a false dilemma — either the law protects poor disabled people

like Reyes, or it protects his child through the child support obligation. That hard choice is an illusion. The record in this case establishes beyond doubt that Reyes lives in poverty. The record is silent as to the financial circumstances of his ex-wife, Estella's mother, but it may well be that her family, too, is impoverished. Indeed, it seems likely that many children living in poverty may have a non-custodial parent receiving SSI. These children would be eligible for assistance through other federal and state programs, such as AFDC and Medicaid. The states are required to attempt to recover from non-custodial parents all funds expended by these welfare programs for the benefit of their children. Child support which is paid for children who receive welfare benefits is assigned to the State, and the children only receive that portion of the child support which exceeds the amount of the welfare benefit. Thus, under these circumstances, the children would not receive the child support payments made by the SSI recipient. Those funds would be used to repay a different welfare program, *Knickerbocker v. Norman*, 933 F.2d 891, 893 (CA8 1991) (right to collect child support payments that have been assigned to state agency continue to be "child support," within meaning of federal law allowing such right to be enforced against federal disability insurance (OASDI) benefits). The state gives with one hand, takes away with the other, provides no benefit to the children, and harms the SSI recipient. This is an incongruous result, and cannot possibly represent the congressional intent. In those instances where an SSI recipient's children are not in poverty, Petitioner's proposal would reduce the SSI recipient to a standard of living below minimum subsistence, while providing only a very small benefit to children whose circumstances are markedly better than those of the SSI beneficiary. This too, is an incongruous result and defeats the purpose of the program.

VII. USING SSI BENEFITS TO DETERMINE CHILD SUPPORT AND THE ENFORCEMENT OF CHILD SUPPORT OBLIGATION AGAINST SSI BENEFITS IS A DISTINCTION WITHOUT A DIFFERENCE.

Petitioner contends quite vigorously that the mere act of including SSI benefits in the calculation of a child support obligation does not subject that benefit to involuntary transfer. In a similar vein, Petitioner urges that § 407 does not prohibit the mere act of establishing a child support order that does not designate or identify the SSI benefits as the source of funds for payment of the obligation. These are disingenuous arguments, the fallacy of which is shown by Petitioner's statement at **n.6, Petition at 12**: "The State does not contend that a child support order based fully, or partially on SSI cannot be enforced. The State contends that such orders can be enforced so long as it [*sic*] is not enforced by a process in the nature of garnishment."

Child support obligations are most commonly enforced through the contempt powers of the court and the incarceration of the obligor. When Petitioner speaks of enforcement of the child support order, these are the primary weapons at his disposal. The SSI recipient is confronted with either paying a portion of his minimum subsistence as child support or the prospect of jail. This is no choice at all. The dissent in *Morris*, 984 S.W.2d at 846 describes this dilemma as follows:

> In this case there is no question about how appellee gets his money, he has but one source, which is diminished by any other funds he may receive. Appellee has been ordered to pay child support. Therefore, there can be no question that the source of funds with which he shall be forced to pay his child support obligation is his SSI disability benefits. I cannot see this sequence of events as anything other than an involuntary transfer of funds in clear contravention of the stated intent and clear language of the statute.

The facts of this case clearly demonstrate the painful choices which would be forced upon an SSI recipient in these circumstances. The trial court in this case automatically applied the guideline percentages to Reyes' SSI benefits to calculate the child support obligation. No consideration was given to Reyes' needs or circumstances. Having no other income available to him, Reyes' choice was to pay the support out of his SSI or face the prospect of jail. This is exactly the kind of dilemma which Congress intended to avoid by passage of the anti-attachment provisions of § 407.

CONCLUSION

This case is rendered moot by the expiration of the child support order which is the basis of the controversy. Furthermore, the decision of the Court of Appeals follows well-established precedent, and is consistent with the decisions of both the federal courts and sister-state courts. Only the Kentucky State Supreme Court has reached a contrary result. The lone decision of the Kentucky court does not render the law in this case unsettled, nor does it create a conflict which need be addressed by this Court. This court should deny the State's petition.

Respectfully submitted,

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SUPPLEMENTAL APPENDIX

SUPPLEMENTAL APPENDIX

STATES HAVING CHILD SUPPORT GUIDELINES THAT EXCLUDE SSI FROM GROSS INCOME:

Alabama	ALA. R. JUD. ADMIN. 32(B)(2)(b);
Alaska	ALAS. R. CIV. P. 90.3, cmt. III.A.;
Arizona	Ariz. Child Support Guidelines, 4.b. (contained in App. To ARIZ. REV. STAT. ANN. § 25-320 (West Supp. 2000));
Colorado	COLO. REV. STAT. ANN. § 14-10-115(7)(a)(I)(B) (West Supp. 2000);
Connecticut	CONN. ADMIN. CODE § 46b-215a-I(II)(A)(ix);
Hawaii	Instructions for the Child Support Guidelines Worksheet and the Simplified Child Support Guidelines Worksheet, I.D.;
Indiana	IND. CHILD SUPPORT RULES & GUIDELINES, Guidelines 3, A.1. (in IND. CODE ANN., tit. 34, App. (West Supp. 2000));
Kansas	KAN. RULES OF COURT, Child Support Guidelines, I.D.;
Louisiana	LA. REV. STAT. ANN. § 9:315(4)(d)(i) (West 2000);

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Maine	ME. REV. STAT. ANN. tit. 19-A § 2001, 5.G. (West 1998);
Maryland	MD. CODE ANN. FAM. LAW, § 12-201(c)(5) (Michie 1999);
Michigan	Michigan Child Support Formula Manual, II.G. (2000);
Missouri	Mo. R. CIV. P., Form No. 14;
Montana	Child Support Guidelines [MT. ADMIN. RULES, Tit. 37, Ch. 62, Subch. 1] Sub-ch 15, R. 4(3);
New Hampshire	N.H. REV. STAT. ANN. § 458-C:2, IV. (Lexis Supp. 2000);
New Jersey	N.J. R. PRAC., App. IX-B;
New York	N.Y. DOM. REL. LAW § 240, 1-b(b)(5)(vii)(F) (McKinney 1999);
North Carolina	N.C. GEN. STAT. § 110-129(6) (Matthew Bender 1999);
North Dakota	N.D. ADMIN. CODE § 75-02-04.1-01, 5.a.(1) [Apx. F];
Ohio	OHIO REV. CODE ANN. § 3113.215(A)(2)(a) (Baldwin 2000);

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Oklahoma	OKLA. STAT. ANN. title 43, § 118, E.2.b. (2)(b) (West 1990);
Pennsylvania	PA. R. CIV. P. 1910. 16-2(b);
Rhode Island	Rhode Island Family Court Admin. Order No. 87-2 (eff. Oct. 1, 1987) pp. 4-5 [Apx. F];
South Carolina	S.C. CODE ANN. REGS. 114-4720A.(2);
South Dakota	S.D. ADMIN. R. 67:10:03:02(4);
Tennessee	TENN. COMP. R. & REGS., ch. 1240-2-4.03(3)(c);
Utah	UTAH CODE ANN. § 78-45-7.5(3)(b) (Michie Supp. 2000);
Vermont	VT. STAT. ANN. tit. 15, § 653(5)(E)(ii) (Equity 1989);
Virginia	VA. CODE ANN. § 20-108.2, C. (Matthew Bender 2000);
Washington	WASH. REV. CODE ANN. § 26.19.071(4)(e) (West Supp. 2001);
West Virginia	W. VA. CODE § 48A-1A-19(d)(3) (Michie 1999);
Wyoming	WYO. STAT. ANN. § 20-6-202(a)(ix) (Lexis 1999).

Supplemental Appendix

STATES WITH GUIDELINES EXCLUDING MEANS-TESTED BENEFITS:

California	CAL. FAM. CODE ANN. § 4058(c) (West 1994) (public assistance excluded);
Delaware	DEL. CODE ANN., tit. 13, § 513(b)(5)d. (Michie 1999) (same);
Georgia	GA. CODE ANN. § 19-6-15(b)(2) (Lexis 1999) (same);
Iowa	Child Support Guidelines foll. IOWA CODE ANN. § 598.21 (West Supp. 2000) (same);
Minnesota	MINN. STAT. ANN. § 518.54 subd. 6 (West Supp. 2000);
Nebraska	NEB. RULES OF COURT, Child Support Guidelines § D. (same);
Nevada	NEV. REV. STAT. ANN. § 125B.070, 1.(a) (Michie 2000); *see Rodgers v. Rodgers*, 887 P.2d 269.271 (Nev. 1994) (Statute states that gross income for purpose of child support calculations is limited to income from wages or self employment);
New Mexico	N.M. STAT. ANN. § 40-4-11.1, C.(2)(a) (Michie 2000) (means-tested public assistance excluded);
Wisconsin	WIS. ADMIN. CODE § WDW 40.02(13)(i) (public assistance excluded).

REPLY

BRIEF

(3)

Supreme Court, U.S.
FILED

JUN 8 2001

OFFICE OF THE CLERK

No. 00-1578

In the Supreme Court of the United States

STATE OF TEXAS,
Petitioner,

v.

RAUL REYES,
Respondent.

On Petition for Writ of Certiorari to the Court of Appeals for the Eighth Judicial District of Texas

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REPLY TO BRIEF IN OPPOSITION

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ARGUMENT

The Court should grant the petition. Respondent fails to disprove any of the three justifications for the Court's certiorari jurisdiction, and instead highlights the long-standing and considerable conflict among state and federal courts and the need for resolution.

I. THIS CASE IS NOT MOOT.

The child support order at issue has not expired, and Reyes flagrantly misrepresents both the Texas Family Code and the trial court order in trying to convince the Court that this case is moot. Respondent improperly cites TEX. FAM. CODE §154.001 for the proposition that Reyes's child support order "expired by operation of the statute," Opp. 6, and requires "payment" only until his daughter Estella's graduation, Opp. 5. Reyes's child support order has not expired. Rather, TEX. FAM. CODE §154.001 declares the time at which a parent's obligation to *support* a child ordinarily ends, not the date on which *payments* cease. If a parent has not paid the full amount of child support by the date the child graduates, including amounts owed in arrears, the child support order may be enforced until the parent has paid all monies due, that is, current support, medical support, and child support arrearages, including interest and any applicable fees and costs. TEX. FAM. CODE §157.269. Thus, as makes good sense, a child support order may be enforced long after a child has graduated from high school. *Id.*

The trial court ordered that Reyes make a regular child support payment of $82.25 per month, plus payments of $25.00 per month to cover a total of $1,620.00 that he owed in arrears as of July 12, 1996. If Reyes had not fully paid the judgment by the time Estella graduated from high school, then Reyes had to pay $107.25 each month *until he paid the judgment in full*. Pet. App. B-4. Reyes has not paid everything he was ordered to pay, and he does not assert otherwise. *See* Office of the Att. Gen. of Tex., Child Support Div.,

Child Support Payment Record (detailing Reyes's child support payments and balance due) (a copy has been lodged with the Court). Thus, the trial court's judgment still "can be carried into effect," if it is upheld. *Local No. 8-6, Oil, Chem. & Atomic Workers Int'l Union v. Missouri*, 361 U.S. 363, 367 (1960).

Whether Reyes still owes child support depends only on whether the trial court properly ordered support based on Reyes's receipt of SSI. If the trial court properly ordered support based on Reyes's SSI, then he still owes payments. If the court should not have ordered support based on SSI, then Reyes's payments since the trial court's order would be considered payments to cover arrearages and interest, and Reyes would owe nothing. *See* TEX. FAM. CODE §157.268 (child support payments are applied first to current child support, and then to other amounts owed, including amounts in arrears and interest). Thus, the amount Reyes owes is still in controversy, both parties have an interest in determining how much money Reyes still owes Estella, and the case is not moot. The State still has the right to collect child support payments from Reyes for amounts he still owes, irrespective of the date Estella graduated from high school. *See* TEX. FAM. CODE §157.269.

II. REYES FAILS TO DISPROVE ANY OF THE THREE JUSTIFICATIONS OF THE COURT'S CERTIORARI JURISDICTION.

A. There Is a Deep Split in State and Federal Courts.

Respondent is unable to refute that there is a considerable and long-standing split among numerous state and federal courts. Reyes fails to properly describe or distinguish the cases cited in the petition, but instead confirms the sharp disagreement by citing additional cases. Opp. 19.[1]

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1. In addition to those cited by Respondent, additional cases demonstrate the unresolved conflict. *E.g.*, *Sckolnick v. Harlow*, 820 F.2d 13 (CA1 1987)

Each of Respondent's contentions regarding other cases Petitioner cites are either incorrect or relate to a separate irrelevant holding of the case. For example, Respondent ignores the holding that Petitioner cited in *Tunnicliff v. Commonwealth Department of Public Welfare*, 396 A.2d 1168 (Pa. 1978), Opp. 19, Pet. 13, and the statement by the court in *Dionne v. Bouley*, 757 F.2d 1344 (CA1 1985), that "the purpose of the exemption created by Congress in 42 U.S.C. §407 is to protect social security beneficiaries from creditors' claims," 757 F.2d, at 1355, Opp. 19. He incorrectly states that *Department of Health & Rehabilitative Services v. Davis*, 616 F.2d 828 (CA5 1980), was "expressly overruled" by *Bennett v. Arkansas*, 485 U.S. 395 (1988), Opp. 19,[2] and portrays the court in *Steiner v. Steiner*, No. 1999-CA-01220-SCt, 2001 WL 83936 (Miss. Feb. 1, 2001), as considering §659, which it did not, Opp. 19. He also incorrectly states that *LaFarr v. LaFarr*, 315 A.2d 235 (Vt. 1974) presented the same fact situation as *Rose* prior to the Court's decision in *Rose* when the cases did not even involve the same benefits, Opp. 19.

Respondent also tries to direct the Court's attention to irrelevant portions of *Peura v. Mala*, 977 F.2d 484 (CA9 1992), *Whaley v.*

(dicta that a bond order does not violate §407 because it is not an attachment or garnishment); *Celebrezze v. Sparks*, 342 F.2d 286 (CA5 1965) (narrow reading of §407); *State Cent. Collection Unit v. Stewart*, 438 A.2d 1311 (Md. 1981) (narrow reading of §407); *Todd v. Romano*, 550 A.2d 111 (N.H. 1988) (broad reading of §407); *Meadows v. Meadows*, 619 P.2d 598 (Okla. 1980) (holding request for alimony is unaffected by exemption in §407 because §407 protects from the claims of *creditors*); *Evans v. Evans*, 434 S.E.2d 856 (N.C. Ct. App. 1993) (holding the purpose of §407 is to protect the benefit recipient *and those dependent upon him* from *creditors*' claims).

2. *Bennett* did disapprove of one of *Department of Health*'s rationales–that §407 did not apply because the state was providing for all of the recipient's care–but it did not disapprove of the other rationale, for which the State explicitly cited the case–that §407 does not apply to familial obligations.

Schweiker, 663 F.2d 871 (CA9 1981), Opp. 17,[3] and *Norman v. St. Clair*, 610 F.2d 1228 (CA5 1980), Opp. 18.[4] Respondent simply cannot refute, however, the point at issue. These courts issued opinions in conflict with other state courts of last resort and federal courts of appeals regarding §407.

In addition, contrary to Respondent's assertion, *Phipps v. Phipps*, 864 P.2d 613 (Idaho 1993), does not "expressly conflict" with the Court's decisions in *Hisquierdo* and *Ridgway*. Opp. 18-19. Most significantly, both *Hisquierdo* and *Ridgway* involved different anti-attachment provisions than those of §407.

Respondent also paints an incomplete and misleading picture of the statutory child support guidelines among the states. Respondent suggests that only a couple of states permit courts to consider SSI in determining child support obligations. Opp. 21-23. Most notably, Respondent fails to elaborate upon those statutes that "neither list or [*sic*] exclude SSI benefits in their definition of income." Opp. 22-23. A quick review of the specific language of these statutes clearly reveals that SSI is to be considered. Pet.

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3. Respondent asserts that neither *Peura v. Mala*, 977 F.2d 484 (CA9 1992), nor *Whaley v. Schweiker*, 663 F.2d 871 (CA9 1981), "speak to the issues presented in this case." Opp. 17. However, they do. The Court in *Whaley* held that Congress intended that "supplemental security income 'help families . . . maintain minimally adequate income levels.'" *Whaley*, 663 F.2d, at 874. The court in *Whaley* directly applied this finding as part of the rationale for its holding. The court in *Peura* reiterated its findings in *Whaley* and did not reject them, but simply found that the specific facts presented in *Peura* were such that the court found it need not look to congressional intent regarding the child support obligation and Medicaid issues presented in that case. *Id.*, at 490.

4. Respondent cannot dispute that the clear holding of *Norman* was that "that statute [§407] clearly contemplates a formal legal proceeding," *Norman*, 610 F.2d, at 1243, and that this holding clearly conflicts with several other courts that have held §407 protects against any "formal or informal" measures or mere "threats" of legal process. Pet. 16.

Supp. App. SA-1–SA-2. The statutes define income as, for example, coming from "any source." *Id.*

Respondent also fails to inform the Court that nine states require or allow courts to order minimum child support payments, *regardless of source of income*. Pet. Supp. App. SA-3–SA-4. These states apparently place great weight upon the duty of parents to support their children. Particularly revealing is that four of these nine states–Colorado, Nebraska, New Hampshire, and Washington–exclude SSI to determine the income level of the parent, but regardless ultimately *require* courts to order minimum support payments in all cases *regardless* of the source of income. *Id.* (listing statutes that, for example, require a minimum monthly child support payment even if the obligor has less than a subsistence income).[5]

In addition, Respondent offers no authority for his proposition that deviation guidelines permit a court only to increase or decrease support without taking SSI into consideration, if SSI could not be considered in the initial calculation. Opp. 22 n.13. Reviewing the actual terms of the states's deviation guidelines,[6] however, shows that discretion to deviate is normally quite broad, with it largely based on what a court's determines is just under the circumstances. Pet. Supp. App. SA-5–SA-7. The deviation

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5. Of all of the statutes, however, perhaps Ohio's is the most instructive. In Ohio, unless the obligor can prove that he or she is totally unable to pay support, the court must order a specific amount of support. OHIO REV. CODE. §§3119.04, 3119.06; Pet. Supp. App. SA-4. However, if the obligor receives need-based public assistance, the current support obligation may not be enforced but still accrues as arrears—the parent receiving need-based public assistance still has the same obligation to support his or her children—the only question is when payment should occur. *Id.*

6. Respondent makes irrelevant comments regarding "Aid for Families with Dependent Children" (replaced with Temporary Assistance to Needy Families–TANF–in 1996) and spousal income that are merely diversions.

guidelines certainly permit a court to consider SSI in determining whether a child support order is appropriate. *Id.*

Nonetheless, whether states' current guidelines permit courts to consider SSI in setting child support payments–either through the definition of income or by deviation–is not the primary focus. A decision by this Court on whether §407 preempts the consideration of SSI is needed to allow states to adopt guidelines that are consistent with the proper interpretation of §407.[7]

B. The Court of Appeals Misapplied Supremacy Clause Jurisprudence.

Respondent contends that the court of appeals's holding is correct.[8] However, Respondent makes numerous arguments that reveal a clear failure to accurately grasp the nature of the federalism question presented. Respondent goes so far as to assert that it is reasonable to impose a preemption standard different from that which the Court specifically developed for domestic relations cases, theorizing that federal law has so invaded state law in the area of child support that a different standard may apply. Opp. 10-11. This reveals Respondent's fundamental misunderstanding that the purpose of the special standard is to ensure that the federal

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7. Thus, contrary to Respondent's assertions, the opinions of *Ex Parte Griggs*, 435 So.2d 103 (Ala Civ. App. 1983), *Whitmore v. Kenney*, 626 A.2d 1180 (Pa. Super. Ct. 1993), and *Sharlot v. Sharlot*, 110 A.D.2d 299 (N.Y. 1985), are no less important and create no less of a conflict because those states' child support guidelines have changed since the issuance of those opinions. Opp. 23. The court decisions remain—and linger for legislators to rely upon them.

8. Respondent misrepresents the court of appeals's holding by stating that the court of appeals found that "any state law that changed or altered the allocation or distribution of SSI benefits must be pre-empted." Opp. 10; Pet. App. A-11. Also, contrary to Respondent's contention, the court did consider Reyes's needs and circumstances. Opp. 3, 9; Pet. App. D-1, D-3 (court considered the pleadings, evidence, argument and briefs from counsel, and determined application of guidelines was reasonable).

government does not improperly encroach upon the traditional realm of the states in the area of domestic relations. Respondent argues that the well-established standard may be abolished because the result the standard was designed to prevent, *i.e.*, federal encroachment, has occurred. Respondent's suggestion of applying a different standard of preemption shockingly ignores important principles of federalism.[9]

Respondent cannot show that considering SSI in the determination of a child support award does "major damage" to a "clear and substantial" federal interest, and that Congress has "positively required by direct enactment" that state law be pre-empted." *Rose v. Rose*, 481 U.S. 619, 625 (1987). The purpose of the SSI program is "[t]o assist those who cannot work because of age, blindness, or disability," S. REP. NO. 92-1230, at 4 (1972), *reprinted in* 1972 U.S.C.C.A.N. 4989, by "set[ting] a Federal guaranteed minimum income level for aged, blind, and disabled persons." *Id.*, at 12; 20 C.F.R. §416.110 (1992); *see Schweiker v. Wilson*, 450 U.S. 221, 223 (1981). Reyes has failed to demonstrate how an order that shows he is obligated to support his child, by a certain amount that a court found reasonable, Pet. App. D-3, without depriving Reyes of funds he needs, does "major damage" to a "clear and substantial" federal interest. In "assisting" SSI recipients, Congress was not *exempting* them from the normal obligations in life.

In addition, the Court has noted that the protection afforded by §407 "is to 'moneys paid,'" *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 416 (1973); *see also* 42 U.S.C. §407. This point

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9. Even were a different preemption standard applied, §407 does not preempt TEX. FAM. CODE §154.062(b)(5) or other child support guidelines that consider SSI. Consideration of SSI does not conflict with the provisions of §407, or operate to frustrate the purpose of the SSI program. *See Boggs v. Boggs*, 520 U.S. 833, 841 (1997).

supports the proposition that a court may consider SSI benefits to determine a child support obligation because such a determination is not an order that reaches "moneys paid." *See Rose*, 481 U.S., at 643 (Scalia, J., concurring in part & concurring in the judgment) (child support orders operate on the *person*, not on his property); *cf. id.*, at 635 (a state-court order of contempt is issued against an *individual*).

Reyes also contends that there is no distinction between consideration of SSI to order child support and enforcement of the order, offering the unconvincing argument that they are one and the same. Reyes fails to recognize that contempt proceedings, which have not been instituted in this case, have procedural requirements whereby an individual is not necessarily put in jail for failure to pay. A contempt order will not issue if the parent shows that he is unable to pay. TEX. FAM. CODE §157.008(c). Thus, an SSI recipient's needs are protected, and no major damage is done to a clear and substantial federal interest. The recipient receives his or her SSI funds because they cannot be garnished, and the recipient will not have to pay unless his or her needs are being met and he or she is able to pay.[10]

Respondent's attempt to point out distinctions between the OASDI and SSI programs is irrelevant. Section 407 applies to SSI

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10. Respondent twists the State's view of enforcement efforts. Opp. 28; Pet. 13. The State has never contended that enforcement efforts are not permissible–only that garnishment is not permissible because the government has not waived its sovereign immunity as to SSI funds for the collection of child support.

In addition, Respondent emphasizes his economic status. He clarifies that he borrowed money in order to prepare his sons for attendance in a public school, not a private school. The record is not clear, as Reyes simply stated that he had borrowed money to pay for his sons to "go to school." II Reporter's Record 39-40. Petitioner was merely demonstrating that, as Reyes had funds to pay for the needs of children to whom he owed no legal obligation, he had funds available for Estella.

to the same extent it applies to Title II (OASDI) benefits. 42 U.S.C. §1383(d)(1) (providing that "the provisions of section 407 . . . shall apply . . . *to the same extent* as they apply in the case of subchapter II") (emphasis added)). Respondent does not rebut this clear mandate.[11] Rather, Respondent admits that OASDI benefits may be considered in the determination of a child support award. Opp. 13. Indeed, it is a logical inference that if OASDI funds are subject to garnishment, they also may be subject to consideration. Thus, if OASDI benefits may be considered in the determination of a child support award, SSI may likewise be considered. Congress apparently did not find it fit to excuse SSI recipients from the long-standing and deeply rooted moral responsibility that parents have for supporting their children. *See Rose*, 481 U.S., at 632 (discussing *Wissner v. Wissner*, 338 U.S. 655 (1950)).[12]

Respondent also asserts that the *ejusdem generis* and *in pari materi* rules do not apply. Opp. 19-21. Petitioner reaffirms its contention that these rules apply. In addition, interpreting the use

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11. In addition, Respondent cites no authority for his conclusions regarding the alleged impact that child support orders have on OASDI recipients versus SSI recipients. Opp. 12-13 n.6. The points are highly fact dependent, and the impact on OASDI recipients versus SSI recipients is pure conjecture. This comparison is wholly irrelevant because §407 applies to SSI to the same extent it applies to OASDI. 42 U.S.C. §1383(d)(1). Respondent makes other irrelevant and extreme factual extrapolations for which he cites no authority. Opp. 27 (going so far as to say that state welfare programs "provide[ ] no benefit to the children"). It is also a clear misunderstanding on the part of Respondent to claim that OASDI benefits do not come from taxpayer dollars, but that SSI benefits do come from taxpayer dollars. Opp. 15. It is well-established that OASDI benefits are a part of the Social Security program and are supported by Social Security taxes. Regardless, any such distinction regarding the source of funding of §407 is irrelevant because §407 applies to SSI to the same extent it applies to OASDI. 42 U.S.C. §1383(d)(1).

12. Because §407 applies to SSI to the same extent it applies to OASDI, Respondent's argument that cases that involve OASDI rather than SSI do not show a conflict fails. Opp. 23-25

of "legal process" broadly in §407 but narrowly in §659 reveals a nonsensical result. If §407 is interpreted so broadly that OASDI benefits are not subject to consideration in a child support determination, then §659's permitting the much more drastic measure of garnishment of OASDI benefits simply does not make sense. There would appear to be no logical reason why OASDI benefits would be subject to garnishment for a child support award but not consideration for a child support award.

C. This Case Presents an Important Question of Federal Law the Court Should Settle.

The Court's resolution of this issue is critically important. If this question remains unresolved, children throughout the United States will continue to be deprived of parental support to which they are entitled.

This erosion of states' rights in the area of child support through a significant number of decisions in state and federal courts must not be permitted to continue. Legislators and courts may continue to rely on incorrect and conflicting jurisprudence that only becomes more entrenched with time. This issue has shown itself to be an ongoing, recurring problem, and there is no indication that it will abate without the Court's review.

The nation's long-standing principles of parental responsibility collide with the results of this case. If SSI recipients are not to be exempt from supporting their children through §407, the continuation of an exemption is intolerable and unjust–to children, their families, and their communities.

CONCLUSION

The Petition should be granted to resolve this important question of unsettled law.

Respectfully submitted,

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SUPPLEMENTAL APPENDIX

STATES WITH GUIDELINES PERMITTING CONSIDERATION OF SSI

Arkansas	Ark. Admin. Ct. Order No. 10 (see *Davis v. Child Support Enforcement*, 20 S.W.3d 273, 278 (Ark. 2000)).
District of Columbia	D. C. CODE ANN. §16-916.1(c) (income from "any source" is considered).
Florida	FLA. STAT. ANN. §§61.30 (11)(a)(2); 409.2554 (gross income includes "but is not limited to" listed items; excludes public assistance defined only as food stamps and money assistance under Titles IV-E and XIX of the Social Security Act – not SSI).
Idaho	IDAHO R. CIV. P. 6(c)(6) (Child Support Guidelines) §6(a) (income from "any source" is considered, including public assistance, except in cases of "extraordinary hardship").
Illinois	750 ILL. COMP. STAT. ANN. 5/505(a)(3) ("total of all income from all sources" considered, less deductions not including SSI); 750 ILL. COMP. STAT. ANN. §45/14(a)(1) ("'net income' of the non-custodial parent shall include any benefits available to that person under the Illinois Public Aid Code or from other federal, State or local government-funded programs").
Kentucky	KY. STAT. ANN. §403.212(b) (explicitly including SSI).

Massachusetts	MASS. GEN. LAWS ANN. 119A, §1A (income is defined as "any periodic form of payment due to an individual, regardless of source"); MASS. RULES OF COURT, CHILD SUPPORT GUIDELINES §1 (income is defined as "gross income from whatever source").
Mississippi	MISS. CODE ANN. §43-19-101(3)(a) (gross income is to be determined from "all potential sources that may reasonably be expected to be available to the absent parent").
Oregon	OR. REV. STAT. §25.245 (presumption that an SSI recipient is unable to pay support is rebuttable).
Texas	TEX. FAM. CODE ANN. §154.062(b) (net resources comprised of listed income types and "all other income actually being received," including disability benefits).

STATES WITH GUIDELINES REQUIRING OR ALLOWING COURTS TO ORDER MINIMUM CHILD SUPPORT PAYMENTS

Colorado	COLO. REV. STAT. ANN. §14-10-115(10)II (minimum monthly child support payment of $20-$50 required even if obligor has less than a subsistence income).
District of Columbia	D.C. CODE ANN. §16-916.1(e)(2) ("in nearly all cases" an obligor shall be ordered to pay at least $50 per month).
Idaho	IDAHO R. Civ. P. 6(c)(6), §4(d) (Child Support Guidelines) ("Rarely should the child support obligation be set at zero. If the monthly income of the paying parent is below $800.00, the Court should carefully review the incomes and living expenses to determine the maximum amount of support that can reasonably be ordered without denying a parent the means for self-support at a minimum subsistence level. There shall be a rebuttable presumption that a minimum amount of support is at least $50.00 per month per child.").
Illinois	750 ILL. COMP. STAT. ANN. §45/14(a)(1) (court shall "in any event and regardless of the amount of the non-custodial parent's net income" order at least $ 10 per month support).
Indiana	IND. CHILD SUPPORT RULES & GUIDELINES, Guideline 2 (court must "determine the maximum amount of child support that can reasonably be ordered without denying the

	obligor the means for self-support at a minimum subsistence level," but "a specific amount of child support should always be ordered").
Nebraska	NEB. RULES OF COURT, Child Support Guidelines, §I ("It is recommended that even in very low income cases, a minimum support of $50 per month be set.").
New Hampshire	N.H. REV. STAT. ANN. §§458-C:2, V., X., 458-C:3, IV(a), (minimum support order of $50 per month is to be ordered for persons whose income is below the poverty level for a single individual).
Ohio	OHIO REV. CODE ANN. §§3119.04, 3119.06 (unless the obligor can prove that he or she is totally unable to pay support, the court is to order a specific amount of support; however, if the obligor receives need-based public assistance, the current support obligation may not be enforced but still accrues as arrears).
Washington	WASH. REV. CODE ANN. §26.19.065(2) ("When combined monthly net income is less than six hundred dollars, a support order of not less than twenty-five dollars per child per month shall be entered for each parent unless the obligor parent establishes that it would be unjust or inappropriate to do so in that particular case.").

STATES WITH DEVIATION GUIDELINES THAT NEITHER SPECIFICALLY INCLUDE NOR EXCLUDE CONSIDERATION OF SSI

Alabama	ALA. R. JUD. ADMIN. 32(A).
Alaska	ALASKA R. CIV. P. 90.3(c)(1).
Arizona	ARIZ. REV. STAT. ANN. §25-320.A; *Id.*, at App.; (Ariz. Child Support Guidelines, 17).
Arkansas	ARK. CODE ANN. §9-12-312(a)(2).
California	CAL. FAM. CODE §4057(b).
Colorado	COLO. REV. STAT. ANN. §14-10-115(3)(a).
Connecticut	CONN. GEN. STAT. ANN. §46b-215b(a).
Delaware	DEL. CODE ANN. tit. 13, §514.
District of Columbia	D.C. CODE ANN. §16-916.1(l).
Florida	FLA. STAT. ANN. §61.30(1)(a).
Georgia	GA. CODE ANN. §19-6-15(b)(5), (c).
Hawaii	HAW. REV. STAT. §571-52.5.
Idaho	IDAHO CODE §32-706(f)(5).
Illinois	750 ILL. COMP STAT. ANN. 5/505(a)(2).
Indiana	IND. CODE ANN. tit. 34, App. (Ind. Child Support Rules & Guidelines, Rule 3 & Guideline 3.F.2).
Iowa	IOWA CODE ANN. ch. 598 (Child Support Guidelines).
Kansas	KAN. CT. R. & PRO., Kan. Child Support Guidelines V.E.

Kentucky	KY. REV. STAT. ANN. §403.211(2), (3).
Louisiana	LA. REV. STAT. ANN. §9:315.1B, C.
Maine	ME. REV. STAT. ANN. tit. 19-A, §2005.
Maryland	MD. CODE ANN. FAM. LAW §12-202(a)(2).
Massachusetts	MASS. GEN. LAWS ANN. ch. 208 §28.
Michigan	MICH. COMP. LAWS ANN. §552.15(2)
Minnesota	MINN. STAT. ANN. §518.551(c).
Mississippi	MISS. CODE ANN. §43-19-103.
Missouri	MO. ANN. STAT. §452.340.9.
Montana	MONT. CODE ANN. §40-4-204(3)(a), (b).
Nebraska	NEB. REV. STAT. §42-364.16.
Nevada	NEV. REV. STAT. ANN. §125B.080(5).
New Hampshire	N.H. REV. STAT. ANN. §458-C:5.
New Jersey	N.J. STAT. ANN. §9-17-53(e); N.J. R. GOVERNING PRAC. IN THE CHANCERY DIV., FAMILY PART 5:6A; N.J. R. PRAC. App. IX-A, 2-3.
New Mexico	N.M. STAT. ANN. §40-4-11.1A.
New York	N.Y. DOM. REL. LAW §240, 1-b.(a).
North Carolina	N.C. GEN. STAT. §50-13.4(c).
North Dakota	N.D. CENT. CODE §14-09-09.7(3).
Ohio	OHIO REV. CODE ANN. §3119.22.
Oklahoma	OKLA. STAT. ANN. tit. 43, §118A.

Oregon	OR. REV. STAT. §25.280.
Pennsylvania	PA. R. CIV. P. 1910.16-5(a)(b).
Rhode Island	R.I. GEN. LAWS §15-5-16.2(a).
South Carolina	S.C. CODE ANN. §20-7-852(A).
South Dakota	S.D. CODIFIED LAWS §25-7-6.10.
Tennessee	TENN. CODE ANN. §36-5-101(e)(1).
Utah	UTAH CODE ANN. §78-45-7(3).
Vermont	VT. STAT. ANN. tit. 15, §659(a).
Virginia	VA. CODE ANN. §20-108.2A.
Washington	WASH. REV. CODE ANN. §26.19.035(2).
West Virginia	W. VA. CODE §48A-1B-14(a), (b).
Wisconsin	WIS. STAT. ANN. §767.25(1m).
Wyoming	WYO. STAT. ANN. §20-2-307.